identity and purpose and wait a reasonable period of time for an occupant to answer the door. In addition, there remain significant alternative remedies for constitutional violations, such as liability under 42 U.S.C. 1983 and the doctrine of *Bivens* v. *Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), or criminal sanctions, as well as non-judicial remedies, such as the possibility of departmental discipline.

In any event, this Court has never permitted a desire for greater deterrence of police misconduct to take precedence over the universal requirement that evidence sought to be suppressed must be causally connected to the illegality. Especially where, as here, the claim of illegality goes only to the manner of executing the search, this Court's cases make clear that suppression of *all* evidence obtained during the warrant-authorized search would be a disproportionately severe remedy.

ARGUMENT

SUPPRESSION OF EVIDENCE IS NOT AN APPROPRIATE REMEDY FOR A KNOCK-AND-ANNOUNCE VIOLATION WHERE THE EVIDENCE WAS SEIZED PURSUANT TO A VALID WARRANT AND WOULD HAVE BEEN DISCOVERED EVEN IF THE OFFICERS HAD DELAYED ENTRY INTO THE PREMISES

The manner in which a search or seizure occurs is governed by the reasonableness requirement of the Fourth Amendment. See *United States* v. *Ramirez*, 523 U.S. 65, 71 (1998); *Graham* v. *Connor*, 490 U.S. 386, 395 (1989). In *Wilson* v. *Arkansas*, 514 U.S. 927, 931 (1995), this Court held that the common-law requirement that officers announce their identity and purpose before entering a home to execute a search forms part of the Fourth Amendment inquiry into the reasonableness of the officers' entry.

Unlike other Fourth Amendment requirements, such as the warrant and probable-cause requirements, the knock-and-announce rule does not protect against improper government discovery or seizure of personal items. Rather, the rule serves three narrower interests. First, it protects "the individual privacy interests intruded upon by a no-knock entry." *Richards* v. *Wisconsin*, 520 U.S. 385, 393 (1997). Although the search or arrest warrant itself justifies a significant intrusion on the occupants' privacy interests, an announcement before entry tempers the suddenness of the invasion of privacy. See *id.* at 393 n.5. Second, a prior announcement protects officers from the possibility that occupants will take violent defensive action based on the mistaken assumption that a criminal intruder is at the door. *Sabbath* v. *United States*, 391 U.S. 585, 589 (1968). Third, a knock before entry prevents needless damage to the door of the home by giving occupants an opportunity to admit the officers peacefully. *Miller* v. *United States*, 357 U.S. 301, 307-308, 313 (1958).[1]

In light of the State's concession, this case proceeds on the assumption that petitioner's Fourth Amendment rights were violated by the officers' early entry into his residence to effectuate the search warrant. It does not follow, however, that the premature entry requires suppression of the evidence that was seized pursuant to the warrant. As noted, petitioner's interest in avoiding improper government seizure of his personal items is *not* among the Fourth Amendment interests protected by the knock-and-announce rule, especially in the context of a search supported by a lawful warrant.

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[1] *Wilson* made clear that the knock-and-announce principle is not an absolute requirement, but may be overcome by "countervailing law enforcement interests." 514 U.S. at 934; *id.* at 935-936 (noting "presumption in favor of announcement" could be overcome where, *inter alia*, officers face "a threat of physical violence" or "have reason to believe that evidence would likely be destroyed if advance notice were given"); accord *Richards*, 520 U.S. at 394; *Ramirez*, 523 U.S. at 67-68 (applying *Richards*'s reasonable-suspicion standard to cases where no-knock entry results in property destruction).

A. Failure To Comply With The Knock-And-Announce Rule Does Not Require Suppression Of Evidence Seized Under The Warrant Because Such Evidence Is Not The Fruit Of The Premature Entry

The exclusionary rule requires suppression only when evidence is acquired *as a consequence* of unlawful conduct. When officers seize evidence pursuant to a lawful warrant, the evidence seized is the fruit of the warrant, rather than the fruit of the unreasonable manner in which the police effected entry. Because the evidence seized under warrant is not the product of the particular government conduct that violated the Fourth Amendment, the exclusionary rule is not an appropriate remedy.

1. The Court Has Carefully Limited Application Of The Exclusionary Rule To Those Instances Where It Is Most Likely To Accomplish Its Remedial Aims Without Imposing Undue Costs

This Court has repeatedly recognized that the exclusionary rule imposes significant costs on society by preventing the use at trial of reliable, probative evidence, thereby allowing culpable defendants to go free.[2] The Court has also

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[2] The Court has recognized, for example, that there is a compelling "public interest in prosecuting those accused of crime and having them acquitted or convicted on the basis of all the evidence which exposes the truth." *Alderman* v. *United States*, 394 U.S. 165, 175 (1969); see *United States* v. *Payner*, 447 U.S. 727, 734 (1980) ("Our cases have consistently recognized that unbending application of the exclusionary sanction to enforce ideals of governmental rectitude would impede unacceptably the truth-finding functions of judge and jury."). The exclusionary rule, if not properly limited, threatens to undermine this interest by allowing "[t]he criminal * * * to go free because the constable has blundered." *Nix* v. *Williams*, 467 U.S. 431, 447 (1984). It also can give rise to a public perception of unfairness that can have the "effect of generating disrespect for the law and administration of justice." *Stone* v. *Powell*, 428 U.S. 465, 491 (1976). See generally *United States* v. *Leon*, 468 U.S. 897, 907-908 (1984); *Illinois* v. *Gates*, 462 U.S. at 254-261 (White, J., concurring in the judgment).

emphasized that the exclusionary rule is a "remedial device," and that as such, its application "has been restricted to those areas where its remedial objectives are thought most efficaciously served." *United States* v. *Calandra*, 414 U.S. 338, 348 (1974); *Illinois* v. *Gates*, 462 U.S. 213, 257 (1983) (White, J., concurring in the judgment) ("[E]xclusion of evidence is not a personal constitutional right but a remedy, which, like all remedies, must be sensitive to the costs and benefits of its imposition.").

For these reasons, the exclusionary rule generally has been invoked only to suppress "[e]vidence obtained as a *direct result* of an unconstitutional search or seizure." *Segura* v. *United States*, 468 U.S. 796, 804 (1984) (emphasis added); see, *e.g.*, *Arizona* v. *Hicks*, 480 U.S. 321 (1987); *United States* v. *Chadwick*, 433 U.S. 1 (1977); *Chimel* v. *California*, 395 U.S. 752 (1969); *Katz* v. *United States*, 389 U.S. 347 (1967); *Mapp* v. *Ohio*, 367 U.S. 643 (1961); *Weeks* v. *United States*, 232 U.S. 383 (1914). In addition, evidence that is obtained through exploitation of the prior illegality may be subject to suppression as the "fruit of the poisonous tree." *Wong Sun* v. *United States*, 371 U.S. 471, 488 (1963). In order for evidence to be considered a "fruit" of the illegality, however, there must necessarily be a causal connection between the evidence the government is seeking to introduce and the relevant illegality. Put another way, suppression is appropriate only if "the challenged evidence is in some sense the product of illegal governmental activity." *United States* v. *Crews*, 445 U.S. 463, 471 (1980). The test for determining whether evidence is the "fruit" of a prior illegality is whether it was "come at by exploitation of [the initial] illegality or instead by means sufficiently distinguishable to be purged of the primary taint." *Wong Sun*, 371 U.S. at 488 (citation omitted); see *Rawlings* v.

Kentucky, 448 U.S. 98, 106-110 (1980); *United States* v. *Ceccolini*, 435 U.S. 268, 274 (1978).[3]

As this Court's cases have made clear, evidence is not a "fruit" of a constitutional violation if it was, or inevitably would have been, obtained irrespective of the constitutional violation. As the Court explained in *Murray* v. *United States*:

> [T]he interest of society in deterring unlawful police conduct and the public interest in having juries receive all probative evidence of a crime are properly balanced by putting the police in the same, *not a worse*, position that they would have been in if no police error or misconduct had occurred. . . . When the challenged evidence has an independent source, exclusion of such evidence would put the police in a worse position than they would have been in absent any error or violation.

487 U.S. 533, 537 (1988) (emphasis added) (quoting *Nix* v. *Williams*, 467 U.S. 431, 443 (1984)); see *id.* at 542 ("[W]hile the government should not profit from its illegal activity, *neither should it be placed in a worse position than it would otherwise have occupied*" absent the illegality.) (emphasis added). Thus, suppression is not appropriate when the Fourth Amendment violation does not place the government

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[3] Petitioner mistakenly asserts (Pet. Br. 11) that *Wong Sun* and *Silverthorne Lumber Co.* v. *United States*, 251 U.S. 385, 390-392 (1920), stand for the proposition that "any kind of evidence found inside private premises following a police entry that is illegal for any reason is inadmissible." Those decisions stand only for the familiar principle that the direct and indirect fruits of an illegal arrest or search should be suppressed when they bear a sufficiently close causal connection to the underlying illegality. *Wong Sun* treated as an "illegal arrest" one in which the police lacked probable cause to detain the suspect; *Silverthorne* treated as an "illegal search" one in which the police searched the defendant's home in the absence of a warrant. In both cases, evidence acquired as a result of the illegal arrest (*Wong Sun*) and illegal search (*Silverthorne*), was a "fruit" of the illegality. In this case, by contrast, the entry and search were made pursuant to a warrant and thus were not "illegal" in the sense used by either of those cases.

in any better position with regard to the discovery of evidence than it would have occupied if the police had complied with the Constitution. See *id.* at 541.

The Court has consistently applied the principles limiting the fruits doctrine to bar the suppression of evidence when it has determined that the receipt of evidence was not "caused" by the particular illegality. In *United States* v. *Crews*, *supra*, a robbery victim identified her assailant after he was arrested without probable cause. The Court assumed that the post-arrest identification should be suppressed, but it refused to suppress the victim's later in-court identification of her assailant as the fruit of the defendant's illegal arrest. The Court noted that the victim came forward before the arrest occurred, and therefore her presence at trial was not traceable to the Fourth Amendment violation. Suppression was inappropriate, the Court held, because "the Fourth Amendment violation * * * yielded nothing of evidentiary value that the police did not already have in their grasp." 445 U.S. at 475. The Court therefore found, as a threshold matter, that the in-court identification was not "'come at by exploitation' of * * * the defendant's Fourth Amendment rights." *Id.* at 471 (quoting *Wong Sun*, 371 U.S. at 488).

In *New York* v. *Harris*, 495 U.S. 14 (1990), the Court relied on *Crews* to reach a similar result. The defendant in *Harris* was arrested in his home. The arresting officers had probable cause to arrest him, but they did not comply with *Payton* v. *New York*, 445 U.S. 573 (1980), which generally requires a warrant to arrest a suspect in his home. After being taken from his home, the defendant made an incriminating statement at the station house. The Court held that the station-house statement was not a fruit of the *Payton* violation. The Court noted that Harris was not "unlawfully in custody" while he was detained at the station house, because "the officers had probable cause to arrest [him] for a crime." 495 U.S. at 18. Emphasizing that the penalties imposed for offi-

cers' violation of the law "must bear some relation to the purposes which the law is to serve," *id.* at 17 (quoting *Ceccolini*, 435 U.S. at 279), the Court concluded that Harris's station-house statement should not be suppressed because it was not "the fruit of having been arrested in the home rather than someplace else." *Id.* at 19.

The Court has at least twice applied related causation principles to refuse to suppress evidence seized under warrant. In *Segura*, *supra*, police illegally entered an apartment without a search warrant and stayed there for 19 hours securing the premises. The next day, the police obtained a valid warrant and searched the apartment, seizing evidence, including narcotics. The Court noted that because the affidavit supporting the search warrant contained no information deriving from the illegal entry, the illegal entry "did not contribute in any way to discovery of the evidence seized" and the evidence was not "the product of illegal governmental activity." 468 U.S. at 815 (quoting *Crews*, 445 U.S. at 471); *id.* at 814 (holding that "legality of the initial entry is * * * wholly irrelevant" to admissibility of evidence seized pursuant to a valid warrant).

Likewise, in *Murray*, *supra*, officers first observed evidence during an illegal, warrantless entry into a warehouse. They later obtained a search warrant, searched the warehouse, and obtained that evidence. The Court noted that the affidavit seeking the warrant had included no information gleaned during the initial entry, and that the decision to obtain that warrant was unaffected by the illegal entry. As in *Segura*, the Court held that the evidence had an "independent source"—the search pursuant to the warrant—and determined that it should not be suppressed. "[W]hile the government should not profit from its illegal activity," the Court emphasized, "neither should it be placed in a worse position than it would otherwise have occupied" absent the illegality. 487 U.S. at 542.

Finally, in *Nix* v. *Williams*, 467 U.S. 431 (1984), the Court declined to apply the exclusionary rule to suppress the body of a victim to which the police had been led through an improperly obtained statement of the defendant, when the body would have inevitably been discovered by a then-ongoing search. The Court emphasized that even if the discovery of evidence is "*in some sense*" a product of government activity, the exclusionary rule's purposes would not be served when the evidence would have been acquired any way by lawful means. *Id.* at 444-448 (quoting *Crews*, 445 U.S. at 471) (emphasis added in *Nix*).

While the various doctrines—inevitable discovery, independent source, and the causation rules—describe different ways in which a violation should not lead to suppression, they all reflect the principle that suppression is too high a price to pay for a particular violation when the causal link between the violation and the acquisition of evidence is weak, non-existent, or irrelevant to exclusionary-rule policies. That is the case when, notwithstanding an antecedent violation, evidence is, or inevitably would have been, acquired pursuant to a valid and untainted search warrant.

2. *A Premature Entry Is Not Causally Related To The Seizure Of Evidence Pursuant To The Warrant*

Causation is equally lacking, and suppression inappropriate, where the sole defect in a warrant-authorized search is the failure of the police to comply with the knock-and-announce requirement. In such cases, it is not the premature or unannounced nature of the entry that leads to the discovery of evidence within a home. It is the fact that the police have a judicially authorized warrant supported by probable cause that authorizes them to seize that evidence. The seized evidence is therefore not the "product" of the prior Fourth Amendment violation (the premature entry); rather, it is the product of the warrant-authorized search.

Under this Court's cases, the exclusionary rule should therefore not apply. There is no dispute in this case that the officers had the authority to search for and seize the evidence in question. The only complaint is about the *manner* in which they executed the warrant, *i.e.*, by entering prematurely. Because the prematurity of the entry into petitioner's residence "did not contribute in any way to discovery of the evidence seized under the warrant," not even the threshold "'but for' requirement" for the "fruits" doctrine was met in this case. *Segura*, 468 U.S. at 815 (citation omitted); see *Harris*, 495 U.S. at 19. Nor is there any dispute that had the police complied with the knock-and-announce requirement—had the illegality never occurred—the officers would have inevitably discovered the same evidence. See *United States* v. *Langford*, 314 F.3d 892, 894 (7th Cir. 2002) ("[I]t is hard to understand how the discovery of evidence inside a house could be anything but 'inevitable' once the police arrive with a warrant.") (citation omitted), cert. denied 540 U.S. 1075 (2003). The conclusion that the evidence should not be suppressed thus follows both from this Court's cases—such as *Crews*, *Harris*, *Segura*, and *Murray*—requiring that the challenged evidence be shown to be a "product" of the illegality, and from the inevitable-discovery doctrine of *Nix*.

To exclude the evidence would "put the police in a *worse* position" than they would have occupied absent the knock-and-announce violation. *Nix*, 467 U.S. at 445.[4] The interest

[4] Petitioner argues (Pet. Br. 27-34) that the Michigan Supreme Court interpreted the "worse position" language in *Nix* in a fashion that would eviscerate the exclusionary rule, because it would allow the police—in any case in which probable cause existed—to argue that the evidence would have inevitably been discovered if they had behaved lawfully. But that reading of *Nix* is not required in order to conclude that it is the pre-existing judicial warrant that *commanded* the officers to search that made the discovery of the contraband inevitable once the officers arrived to execute the warrant. Even though the officers retained discretion in executing the warrant, see *Town of Castle Rock* v. *Gonzales*, 125 S. Ct. 2796, 2808 (2005), the warrant itself represents a judicial

of society in obtaining probative evidence in this context is particularly acute because, in cases involving knock-and-announce violations, the police by definition will have already obtained a search warrant from a neutral magistrate based on probable cause that a crime has been or is being committed, and will have carried out the command of that judicial warrant by searching for evidence of that criminal activity.[5]

Petitioner argues (Pet. Br. 22-27) that the independent-source and inevitable-discovery doctrines cannot save a warrant-authorized search that follows on the heels of a knock-and-announce violation because in such cases there is no wholly independent source for the seized evidence. It follows, he claims, that evidence seized during that search is the direct fruit of the illegal entry. He attempts to distinguish *Segura* and *Murray* on the ground that in those cases, there was one illegal search, followed by a second search that had both a legal warrant *and* a legal entry. Cf. *United States* v.

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directive to search the premises, see Mich. Comp. Laws Ann. § 780.654 (West 1998) (requiring that "search warrant shall be directed to the sheriff or any peace officer, *commanding* such officer to search the house, building, or other location or place, where any property or other thing for which he is required to search is believed to be concealed") (emphasis added). Cf. Fed. R. Crim. P. 41(e)(2) (stating that "warrant must command the officer to * * * execute the warrant").

[5] It is possible, of course, that had the officers in this case not made a premature entry after announcing their presence and purpose, persons inside the home who were alerted to the arrival of the police might have destroyed the drugs during the brief interval between the officers' announcement and their entry into petitioner's home. Petitioner does not rely upon that possibility as a basis for arguing that the evidence seized pursuant to the warrant was the "fruit" of the early entry, nor could he. In *Segura*, this Court rejected the analogous claim that, because Segura could have destroyed drug evidence during the hours that the police unlawfully secured his apartment from the inside, the unlawful entry caused discovery of the evidence. The premise of that claim, the Court stated, "is that there is some 'constitutional right' to destroy evidence. This concept defies both logic and common sense." 468 U.S. at 816.

Dice, 200 F.3d 978, 985 (6th Cir. 2000) (*Murray* and *Segura* "involved a *second search* pursuant to a valid warrant, and that second search was independent of the illegal initial search."); *United States* v. *Marts*, 986 F.2d 1216, 1220 (8th Cir. 1993) (same).

As an initial matter, petitioner is mistaken about *Segura*. Although that case involved two searches, it, like this case, involved only a single (and defective) entry. See 468 U.S. at 819 (Stevens, J., dissenting) (noting that the agents that had illegally entered and remained inside to secure the apartment conducted the warrant-authorized search once they were notified that the warrant had issued). Petitioner's argument that an unlawful entry necessarily taints any search conducted following that entry is therefore flatly inconsistent with *Segura*, which found the "legality of the initial entry" to be "wholly irrelevant" to the admissibility of evidence seized pursuant to a valid warrant. *Id.* at 814.

Petitioner's argument also misperceives the relevant inquiry. The warrant-authorized searches in both *Segura* and *Murray* provided an independent source for the seizure of the evidence because the warrants were not based on any information acquired as a result of the initial illegal entries. But when the only alleged violation is a premature entry in the execution of a previously obtained, otherwise valid warrant, it is beyond dispute that the warrant is not based on any evidence acquired as a result of the unlawful manner in which the officers gained entry. The facts concerning entry do not somehow work to deprive the warrant of its status as an independent, untainted basis for the search. Thus, the previously issued warrant furnishes an independent basis for the search that cannot be tainted by the subsequent unreasonable entry.

Petitioner's argument also fails to focus on the precise nature of the alleged violation. Although there was only one "search" of petitioner's home, the search itself—which was conducted pursuant to a valid warrant—was not unlawful.

Nor was the entry into petitioner's home unauthorized. The only aspect of the police officers' conduct that was unlawful was their failure to wait for a brief additional period before entering, and petitioner makes no claim that the premature entry itself resulted in the discovery of any evidence.

It is more than a little anomalous to suggest that police, as in *Segura* and *Murray*, may validly seize evidence pursuant to an untainted warrant when the earlier illegality is the greater one of entering a residence in the absence of any warrant at all, but they may not validly seize evidence pursuant to an untainted warrant when the antecedent illegality is the lesser one of entering a few moments prematurely during the execution of a valid warrant. Neither precedent nor logic dictates such a result.

3. Violations Relating Only To The Manner Of Executing Warrants Do Not Require Suppression Of All Evidence Seized During the Warrant-Authorized Search

This and other courts have repeatedly indicated that suppression is not an appropriate remedy for every illegality that might occur in the *manner* in which officers execute a valid search warrant, especially where the Fourth Amendment's regulation of the manner of the search reflects interests distinct from the privacy interest in the underlying seized items. For instance, in *United States* v. *Ramirez*, 523 U.S. 65 (1998), this Court implicitly recognized that the failure to execute a search warrant in a reasonable manner does not inevitably lead to the suppression of any evidence; rather, suppression is warranted only if the evidence seized is the product of the particular illegality. There, as part of their entry into the home, police executing a "no-knock" warrant to search for drugs and guns broke a garage window and aimed a gun through the opening in order to discourage anyone from gaining access to weapons the police believed might be in the

garage. This Court rejected the court of appeals' conclusion that a higher level of exigency was required to justify a no-knock entry that results in such property damage. *Id.* at 71. But the Court did not hold that the police have carte blanche to destroy property during the execution of a warrant. Observing that the manner in which police execute a search warrant is governed by the "general touchstone of reasonableness which governs Fourth Amendment analysis," *ibid.*, the Court stated: "Excessive or unnecessary destruction of property in the course of a search may violate the Fourth Amendment, even though the entry itself is lawful *and the fruits of the search are not subject to suppression.*" *Ibid.* (emphasis added).[6]

Because the Court in *Ramirez* found that the officers in entering the premises had acted reasonably in breaking the garage window, the Court had no occasion to determine whether, if the officers had violated the Fourth Amendment in breaking the windows, the guns seized pursuant to the warrant should have been suppressed. The Court indicated, however, that suppression would not automatically follow as a result of such a Fourth Amendment violation, but rather would be warranted only if "there was sufficient causal rela-

[6] Petitioner argues (Pet. Br. 14) that, in making the observation that property destruction during the execution of a search warrant may violate the Fourth Amendment "*even though the entry itself is lawful* and the fruits of the search are not subject to suppression," the *Ramirez* Court was making a distinction, for purposes of the exclusionary rule, between unreasonable police conduct during the execution of a warrant and unreasonable police conduct while obtaining entry to execute the warrant. He suggests that if the police obtain entry in an unreasonable manner, everything seized during the subsequent search is subject to exclusion. But that reading of *Ramirez* is not sustainable. The point the Court was making was that if the police have a lawful right to enter—because they have a search warrant—evidence seized pursuant to the warrant is not subject to exclusion even though the police damage more property than was reasonably necessary in order to effectuate the entry *and* conduct the search. After all, the destruction of property at issue in *Ramirez* occurred *during the entry.*

tionship between the breaking of the window and the discovery of the guns." 523 U.S. at 72 n.3. Cf. *United States* v. *Folks*, 236 F.3d 384 (7th Cir.) (holding that regardless of reasonableness of using a distraction (flash-bang) device in connection with entry and search of residence, evidence was admissible because it inevitably would have been discovered during course of warrant-authorized search), cert. denied, 534 U.S. 830 (2001).

Similarly, in *Wilson* v. *Layne*, 526 U.S. 603 (1999), homeowners sued federal officers pursuant to *Bivens* v. *Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), and state officers under 42 U.S.C. 1983, on the ground that the homeowners' Fourth Amendment rights were violated because police officers executing an arrest warrant at their home invited the media to accompany them. The Court held that such a "media ride-along" violated the Fourth Amendment but that the officers were entitled to the defense of qualified immunity because the law prohibiting such conduct was not clearly established at the time the search took place. In a footnote, the Court observed:

> Even though such actions might violate the Fourth Amendment, if the police are lawfully present, the violation of the Fourth Amendment is the presence of the media and not the presence of the police in the home. We have no occasion here to decide whether the exclusionary rule would apply to any evidence discovered or developed *by the media representatives.*

526 U.S. at 614 n.2 (emphasis added). Implicit in this language is the recognition that evidence discovered *by the police* during the course of the arrest would not be subject to exclusion because there was nothing illegal about their presence in the home and no impairment of the warrant; rather, only evidence discovered or developed by the media would arguably

be subject to exclusion, because it was their presence that violated the Fourth Amendment.[7]

In addition, the courts of appeals have consistently held that items seized pursuant to a valid warrant are not to be excluded from evidence merely because the officers conducting the search also seized items not specified in the warrant. See, *e.g.*, *United States* v. *Sears*, 411 F.3d 1124, 1131 (9th Cir. 2005) ("Our case law on searches that exceed the terms of valid warrants also supports a remedy of partial suppression. 'Ordinarily, only evidence that is obtained in violation of a warrant is suppressed.'") (citation omitted); accord *United States* v. *Hamie*, 165 F.3d 80, 84 (1st Cir. 1999); *United States* v. *Jones*, 31 F.3d 1304, 1314 (4th Cir. 1994); *United States* v. *Heldt*, 668 F.2d 1238, 1259-1269 (D.C. Cir. 1981), cert. denied, 456 U.S. 926 (1982); *United States* v. *Dunloy*, 584 F.2d 6, 11 n.4 (2d Cir. 1978). And this Court has recognized the correctness of those decisions. See *Waller* v. *Georgia*, 467 U.S. 39, 43-44 n.3 (1984) (noting that because all items unlawfully seized during a warrant search were suppressed, "there is certainly no requirement that lawfully seized evidence be suppressed as well").

The result should be no different when the only illegality that occurs during the execution of the warrant is the police's failure to wait a few additional moments after knocking and announcing before entering the premises. When such a premature entry is the relevant Fourth Amendment violation, the remedy must respond to the defect in the manner of entry, and suppression only makes sense to the extent that evidence is acquired as a direct consequence of the prematurity of entry—for example, an utterance by a suspect made as police

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[7] At least one court has interpreted the footnote in this fashion. See *United States* v. *Hendrixson*, 234 F.3d 494, 496 (11th Cir. 2000) (relying on *Wilson* to hold that presence of media during execution of search warrant violated Fourth Amendment, but that evidence discovered by police was not subject to suppression), cert. denied, 534 U.S. 955 and 956 (2001).

enter but before they announce their identity that might not have been obtained by police had they announced their presence, or excited utterances prompted by an unannounced, premature, or forceful entry. The exclusionary rule does not, however, require suppression of the evidence seized pursuant to the warrant, because that evidence is not the fruit of the relevant Fourth Amendment violation.

4. Petitioner's Reliance On Cases Involving Searches Incident To Warrantless And Unlawful Arrests Is Misplaced

Petitioner mistakenly asserts (Pet. Br. 9-12) that this Court's decisions in *Miller* v. *United States*, 357 U.S. 301 (1958), and *Sabbath* v. *United States*, 391 U.S. 585 (1968), control the instant inquiry and require the suppression of evidence seized under a warrant following a knock-and-announce violation. In both of those cases, the police made *warrantless* entries into the defendants' homes in order to arrest them, without first announcing their presence and purpose, in violation of the federal knock-and-announce statute, 18 U.S.C. 3109.[8] Searches made incident to those arrests yielded contraband that was admitted into evidence at the defendants' trials. The Court held that the statutory violations rendered the arrests unlawful, requiring suppression of the evidence seized incident to the arrests. *Miller*, 357 U.S. at 313-314; *Sabbath*, 391 U.S. at 586.

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[8] Section 3109 states: "The officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute a search warrant, if, after notice of his authority and purpose, he is refused admittance or when necessary to liberate himself or a person aiding him in the execution of the warrant." The Court has noted that read literally the statute "prohibits nothing," but assumed arguendo in *Ramirez* that "the statute implicitly forbids some of what it does not expressly permit." 523 U.S. at 72. Likewise, although the statute refers only to search warrants, its criteria have been applied as well to the execution of arrest warrants. *Sabbath*, 391 U.S. at 588-589; *Miller*, 357 U.S. at 306; *Wong Sun*, 371 U.S. at 482-484.

As an initial matter, the Court's decisions in *Miller* and *Sabbath* were rendered at a time when the Court assumed that all federal violations of the law governing search and seizure required the suppression of all evidence seized. Since then, however, as explained above, see pp. 7-12, *supra*, the Court has made clear that, because of the high costs of the suppression of relevant and reliable evidence, the exclusionary rule should be applied only to the extent necessary to effectuate its purposes and only to the extent that seized evidence logically constitutes a fruit of a particular violation.

Moreover, the analysis employed by the Court in later cases demonstrates that a knock-and-announce violation, by itself, does not render an otherwise valid arrest illegal. *Miller* and *Sabbath* predated this Court's decision in *Payton*, *supra*, that a warrantless entry into a defendant's home to arrest him violated the Fourth Amendment. Rather, at the time *Miller* and *Sabbath* were decided, as the Court in *Miller* noted, the lawfulness of a warrantless arrest was governed by local law. In *Miller*, the local law governing warrantless arrests mirrored the requirements set forth in the federal knock-and-announce statute, 18 U.S.C. 3109; the search by federal officers in *Sabbath* was directly governed by 18 U.S.C. 3109. Because the Court found that the arrests in both cases did not comply with those requirements, it held that the warrantless arrests were illegal. After *Payton*, however, it is clear that if the police have a warrant, they may make a valid in-home arrest. A failure to comply with the knock-and-announce rule in that context would render unlawful only the manner of effecting entry; it would not render unlawful the arrest itself.

In any event, under contemporary doctrine as applied to the facts in *Miller* and *Sabbath*, the exclusion of evidence in those cases is consistent with the governing principle that the exclusionary rule should be applied only if the seized evidence constitutes a fruit of a particular violation. Because the officers in both *Miller* and *Sabbath* had no search warrant, the

government sought to admit the evidence in question pursuant to the search-incident-to-arrest doctrine. But, for evidence to be admissible under that doctrine, it "must be the product of a search incident to a *lawful* arrest." *Ker* v. *California*, 374 U.S. 23, 34 (1963) (emphasis added). Because the arrests in both *Miller* and *Sabbath* were illegal—under current law, because of the lack of a warrant—the suppressed evidence could plainly be said to be the fruit or product of those unlawful arrests.[9]

The same, however, cannot be said of evidence seized pursuant to a valid search warrant following a failure to comply with the knock-and-announce requirement. In that situation, the government is not seeking to introduce the evidence under a search-incident-to-arrest rationale, but as evidence seized pursuant to a valid warrant. The evidence is thus the fruit, not of an illegal arrest, but of a warrant authorizing its seizure.

B. The Court Should Not Abandon The Fundamental Requirement Of Causation In Order To Increase Deterrence Of Knock-And-Announce Violations

Petitioner contends (Pet. Br. 34-42) that, notwithstanding the well-established limitations on the exclusionary rule discussed above, suppression is necessary in this context in

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[9] This Court's decision in *Ker*, which also pre-dates *Payton*, is to the same effect. There, the Court upheld the admission of evidence seized by state officers following the warrantless arrests of the defendants inside their home. As in *Miller* and *Sabbath*, the admissibility of the evidence depended on whether it was the "product of a search incident to a lawful arrest, since the officers had no search warrant." As in *Miller* and *Sabbath*, the plurality in *Ker* looked to state law to determine the lawfulness of the warrantless arrests. 374 U.S. at 37-38. Because California's statute permitted officers to enter a home without notice when exigent circumstances were present, and the plurality found such exigent circumstances were present in that case, it found the arrests to be lawful under both California law and reasonable under Fourth Amendment standards. Accordingly, the searches were lawful because they were incident to lawful arrests. *Id.* at 38-43.

order to deter police from violating the knock-and-announce rule. According to petitioner, absent the remedy of suppression, police officers would routinely violate the knock-and-announce rule with impunity. Petitioner is mistaken.

1. Petitioner's premise—that knock-and-announce violations will never lead to the exclusion of evidence—is flawed: suppression remains available under settled remedial principles where the discovery of evidence is the product of the prematurity of the entry. For example, if the police enter without announcing their identity and purpose, someone inside might make an incriminating statement that he would not have made had he known that it was the police entering his home. Similarly, an immediate forcible entry might startle an incriminating statement from an occupant. See *Marts*, 986 F.2d at 1222 (Fagg, J., dissenting) (In the absence of an exclusionary remedy, police officers still have an incentive to comply with the knock-and-announce rule because they "know that any evidence seized as a direct result of the entry may be suppressed. * * * [O]fficers armed with a search warrant would be foolhardy to enter early in violation of [the knock-and-announce rule] because they have no way of knowing what they will see, hear, or learn when they enter."); accord *People* v. *Murphy*, 13 Cal. Rptr. 3d 269, 298-299 (Ct. App. 2004) (Benke, Acting P.J., dissenting) (noting situations in which evidence could be fruit of premature entry), review granted, 16 Cal. Rptr. 3d 330 (2004).

Petitioner's argument that absent the remedy of suppression the police will routinely ignore the knock-and-announce rule also rests on the flawed assumption that the police will deliberately violate this Court's decisions interpreting the Constitution. That assumption of bad faith is unwarranted, particularly in light of the practicalities of the situation. When police arrive at a residence to execute a search warrant, the magistrate has already authorized the seizure of the items named in the warrant. Where the police have no

reason to fear that anyone inside will respond with violence, the destruction of evidence, or an escape attempt, the police have ample incentives to announce their identity and purpose and wait for an occupant to come to the door to admit them: after all, an unannounced entry runs the very real risk that the occupants will take violent defensive action based on the mistaken assumption that the entering parties are criminal intruders. Indeed, this is one of the principal interests furthered by the knock-and-announce rule. See *Sabbath*, 391 U.S. at 589; *Miller*, 357 U.S. at 313 n.12.

Moreover, expansive application of the exclusionary rule in this context would risk overdeterrence. Underlying most failures to comply with the knock-and-announce rule is the officers' concern that substantial delay after announcement would endanger their safety or enable the suspects to destroy evidence or escape. See Kemal Alexander Mericli, *The Apprehension of Peril Exception to the Knock and Announce Rule—Part I*, 16 Search and Seizure L. Rep. 129, 129-130 (July 1989). Ensuring officer safety and preserving the very evidence whose seizure the warrant authorizes are plainly important and wholly legitimate law enforcement objectives. Dispensing with the requirement of causation and suppressing all the evidence found in the warrant-authorized search whenever officers' on-the-spot judgments miscalculate the exigencies of the situation might induce police officers to be unduly cautious in assessing how best to execute the warrant, at the possible expense of their safety and the preservation of the evidence to be seized under the warrant. See *Gates*, 462 U.S. at 258 ("It would be surprising if the suppression of evidence garnered in good faith, but by means later found to violate the Fourth Amendment, did not deter legitimate as well as unlawful police activities. To the extent the [exclusionary] rule operates to discourage police from reasonable and proper investigative actions, it hinders the solution

and even the prevention of crime.") (White, J., concurring in the judgment).

2. It is true that this Court has concluded that criminal remedies are inadequate as the sole means of safeguarding Fourth Amendment requirements. See *Mapp*, 367 U.S. at 651-653. Nevertheless, it is not irrelevant that, in addition to criminal remedies, judicial remedies for constitutional violations may be available through claims under 42 U.S.C. 1983 and the doctrine of *Bivens*, 403 U.S. at 397. See *Segura*, 468 U.S. at 812; see also *Correctional Servs. Corp.* v. *Malesko*, 534 U.S. 61, 70 (2001) ("The purpose of *Bivens* is to deter individual federal officers from committing constitutional violations" and "the threat of litigation and liability will adequately deter federal officers for *Bivens* purposes no matter that they may enjoy qualified immunity."); *Langford*, 314 F.3d at 894-895; *United States* v. *Sutton*, 336 F.3d 550, 552-553 (7th Cir. 2003). There are also non-judicial remedies that will continue to deter law enforcement officers from violating the knock-and-announce rule, such as the possibility of departmental discipline. See *Nix*, 467 U.S. at 446 ("Significant disincentives to obtaining evidence illegally—including the possibility of departmental discipline and civil liability—also lessen the likelihood that the ultimate or inevitable discovery exception will promote police misconduct.") (citing *Bivens*, 403 U.S. at 397); *United States* v. *Payner*, 447 U.S. 727, 733-734 n.5 (1980) (refusing to assume that "lawless conduct, if brought to the attention of responsible officials, would not be dealt with appropriately" and concluding that "[t]o require in addition [to government discipline] the suppression of highly probative evidence * * * would penalize society unnecessarily").

But even if petitioner were correct about the role of the exclusionary rule in deterring knock-and-announce violations, that would not justify departing from the universal requirement of causation. This Court has never placed deterrence concerns above all others in administering the exclusionary

rule, but has instead balanced the rule's costs in a given situation against its deterrent effect. See *Payner*, 447 U.S. at 734. That approach has left some violations in certain instances undeterred. Thus, violations of the constitutional rights of one person that produce useful evidence only against other persons fall outside the scope of the rule, even though expansion of the exclusionary remedy to reach such violations could have additional deterrent effect. *Alderman* v. *United States*, 394 U.S. 165, 171-176 (1969); *Rakas* v. *Illinois*, 439 U.S. 128, 133-134 (1978); *United States* v. *Salvucci*, 448 U.S. 83, 95 (1980). Likewise, constitutional violations that produce evidence that independently is, or inevitably would have been, discovered anyway should not, the Court has held, result in the exclusion of that evidence. See *Murray*, 487 U.S. at 536-541; *Nix*, 467 U.S. at 444; see also *id.* at 452, 456-457 (Stevens, J., concurring in the judgment); *id.* at 459 (Brennan, J., dissenting). And the Court has applied the independent-source doctrine over the objection of dissenters that it would provide "an affirmative incentive to engage in unconstitutional violations of the privacy of the home." *Segura*, 468 U.S. at 817 (Stevens, J., dissenting); see *Murray*, 487 U.S. at 551 (Marshall, J., dissenting) (independent-source rule provides "an intolerable incentive for warrantless searches"). Indeed, it could be argued that officers who have initiated the process of obtaining a warrant based on existing information have *no* incentive to refrain from an immediate warrantless entry of the premises to be searched: if the warrant issues, the evidence would be admitted under the independent-source doctrine. Yet the Court's independent-source jurisprudence rejects this line of argument. See *Murray*, 487 U.S. at 539-540.

The same reasoning applies with particular force where the violation does not relate to the authority of the officers to conduct the search, but rather only to the manner in which they executed it. When the illegality relates to the authority of the police to search for and seize particular evidence, there

is a direct connection between the exclusionary rule, which denies the government the opportunity to exploit the inappropriately seized evidence against a defendant in a criminal trial, and the constitutional violation itself—the right of the defendant to keep his personal items secure from precisely such government search and seizure. But where, as here, the illegality relates only to the *manner* of executing a lawful warrant and there is no doubt as to the government's authority to seize and use the evidence in question, there is a poor fit between the remedy of suppression and the interests protected by the right violated. The knock-and-announce rule does not protect an individual from having the government search for and seize personal items that are covered by a valid warrant. It protects only interests in the way in which entry is achieved to conduct the search and seizure. There is therefore a logical disconnect between the nature of the violation and the extent of suppression sought. Suppression of evidence covered by a valid warrant because of a knock-and-announce violation makes no more sense than remedying a technical defect in an overbroad warrant by forcing the officers to pay for a door broken down when exigent circumstances justified the use of force. There are distinct Fourth Amendment interests and violations, and a suppression remedy that is appropriate when the underlying search is defective is disproportionate when the only Fourth Amendment problem is in the manner of entry. That disproportionality argues strongly against imposing on society "the considerable harm that would flow from indiscriminate application of an exclusionary rule." *Payner*, 447 U.S. at 734.[10]

[10] Petitioner suggests (Pet. Br. 40-42) that application of the inevitable discovery exception in this context would hinder development of Fourth Amendment law because courts generally would have no occasion to decide whether particular police conduct violated the knock-and-announce rule. The Court in *Leon* addressed a similar concern about application of the good-faith exception to the exclusionary rule by noting that "[t]here is no need for courts to adopt the inflexible practice of always deciding whether the officers' conduct mani-

C. Suppression Is A Disproportionately Severe Remedy On The Facts Of This Case

Exclusion of all the evidence seized pursuant to the warrant would be an especially harsh remedy given the nature of the violation in this case. The officers loudly announced their identity and their purpose before entering. They accomplished the entry by turning the knob and opening the door, causing no damage to any of petitioner's property. Plainly, then, the manner in which they entered fully protected two of the interests furthered by the knock-and-announce rule: safeguarding law enforcement officers from being mistaken as unlawful intruders, thus lessening the potential for violence, and avoiding needless property damage.

The knock-and-announce rule also serves the purpose of giving occupants the opportunity to prepare themselves for the entry. As the Court observed in *Richards* v. *Wisconsin*, 520 U.S. at 393 n.5, "[t]he brief interlude between announcement and entry with a warrant may be the opportunity that an individual has to pull on clothes or get out of bed." Here, however, the immediate entry did not catch petitioner in an intimate or compromising moment. Rather, the officers immediately saw petitioner as they entered the house, sitting in a living room chair. Accordingly, given that the warrant authorized the far greater invasion of petitioner's privacy, the invasion into petitioner's privacy occasioned by the immediate entry in this case was minimal. See *United States* v. *Espinoza*, 256 F.3d 718, 725 (7th Cir. 2001) ("[T]he exclusionary rule should be limited only to those instances where

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fested objective good faith before turning to the question whether the Fourth Amendment has been violated." 468 U.S. at 924. Rather, "[i]f the resolution of a particular Fourth Amendment question is necessary to guide future action by law enforcement officers and magistrates, nothing will prevent reviewing courts from deciding that question before turning to the good-faith issue." *Id.* at 925. Nothing would prohibit the courts from exercising a similar discretion in knock-and-announce cases.

the constitutional violation has caused actual harm to the interest * * * that the rights protect.") (internal quotation marks omitted), cert. denied, 534 U.S. 1105 (2002); *People* v. *Murphy*, 13 Cal. Rptr. 3d at 296 (Benke, Acting P.J., dissenting) ("[T]he right of privacy in this context is a limited one. In every announcement case the officers have the right to enter. Admittance may not be refused. As we use the term 'privacy' in such cases, the right is less ethereal and more practical, *i.e.*, allowing occupants to get out of bed or get dressed and thus see who is at the door.").

Where, as here, officers with a valid warrant have announced their presence and purpose, and the knock-and-announce violation consists solely of their having entered the residence a few seconds early, society's vital interest in combating crime should not be sacrificed by application of the exclusionary rule. As the Court observed in *Stone* v. *Powell*: "The disparity in particular cases between the error committed by the police officer and the windfall afforded a guilty defendant by application of the [exclusionary] rule is contrary to the idea of proportionality that is essential to the concept of justice." 428 U.S. 465, 490 (1976).

CONCLUSION

The judgment of the Michigan Supreme Court should be affirmed.

Respectfully submitted.

PAUL D. CLEMENT
Solicitor General
ALICE S. FISHER
Assistant Attorney General
MICHAEL R. DREEBEN
Deputy Solicitor General
DAVID B. SALMONS
Assistant to the Solicitor General
DEBORAH WATSON
Attorney

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IN THE

Supreme Court of the United States

BOOKER T. HUDSON, JR.,
Petitioner,

v.

STATE OF MICHIGAN,
Respondent.

On Petition For A Writ Of Certiorari To The Court Of Appeals Of Michigan

BRIEF FOR THE CATO INSTITUTE AND NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

TIMOTHY LYNCH
MARK K. MOLLER
THE CATO INSTITUTE
1000 Massachusetts Ave., N.W.
Washington, D.C. 20001
(202) 842-0200

TRACEY MACLIN
(Counsel of Record)
Boston University School of Law
765 Commonwealth Ave.
Boston, MA 02215

MALIA N. BRINK
JOSHUA L. DRATEL
NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS
1150 18th St., N.W.
Suite 950
Washington, D.C. 20036
(202) 872-8600

Counsel for Amici Curiae

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20001

QUESTION PRESENTED

Does the inevitable discovery doctrine create a *per se* exception to the exclusionary rule for evidence seized after a Fourth Amendment "knock and announce" violation, as the Seventh Circuit and the Michigan Supreme Court have held, or is evidence subject to suppression after such violations, as the Sixth and Eighth Circuits, the Arkansas Supreme Court, and the Maryland Court of Appeals have held?

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BRIEF FOR THE CATO INSTITUTE AND NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

INTEREST OF AMICI[1]

The Cato Institute was established in 1977 as a nonpartisan public policy research foundation dedicated to advancing the principles of individual liberty, free markets, and limited government. Cato's Center for Constitutional Studies was established in 1989 to restore the principles of limited constitutional government. The Center publishes books and studies, conducts conferences and forums, publishes the annual *Cato Supreme Court Review*, and files *amicus curiae* briefs with this Court. The instant case addresses an important Fourth Amendment issue, and is thus of central concern to the Cato Institute and its Center for Constitutional Studies.

The National Association of Criminal Defense Lawyers (NACDL) is a nonprofit corporation founded in 1958 to ensure justice and due process for persons accused of crime; to foster integrity, independence, and expertise of the criminal defense bar; and to promote the fair administration of criminal justice. NACDL strives to defend the liberties guaranteed by the Bill of Rights and therefore has an interest in the important Fourth Amendment issues raised in this case.

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[1] Letters of consent to the filing of this brief have been lodged with the Clerk of the Court pursuant to Rule 37.3. Pursuant to Rule 37.6, counsel for *amici* state that no counsel for a party authored this brief in whole or in part. *Amicus* Cato Institute funded the preparation and submission of this brief with the financial support of a grant from the JEHT Foundation Trust, a nonprofit charitable institution incorporated under the laws of the State of New York that provides monetary assistance to organizations engaged in criminal justice reform.

STATEMENT OF THE CASE

On August 27, 1998, at approximately 3:35 p.m., several Detroit police officers arrived at the home of Petitioner Booker T. Hudson, Jr., to execute a search warrant for weapons and narcotics. Officer Jamal Good testified that he did not see or hear any activity in the home as he approached the door. Although Good announced "Police, search warrant," he did not knock on the door and did not wait for anyone to open the door. J.A. 19-20. Good waited three to five seconds before opening the door and entering "[r]eal fast." J.A. 19. After entering the home, Good saw Petitioner seated in the living room. Good ordered Petitioner to remain seated. After a sweep of the premises, Good returned to the living room and conducted a protective frisk of Petitioner. That search revealed five rocks of cocaine in Petitioner's pants pocket. J.A. 4-8.

Based on the evidence found in Petitioner's pants and other evidence obtained pursuant to the execution of the search warrant, Petitioner was charged with possession of cocaine with intent to deliver, possession of cocaine, and felony firearm. At the suppression hearing, the prosecutor conceded that the police entry into Petitioner's home violated the knock-and-announce requirement. Pet. App. 10. The trial court granted Petitioner's motion to suppress the evidence found on his person and in his home. Respondent then appealed to the Michigan Court of Appeals for peremptory reversal of the trial court's suppression order. Although Respondent conceded that the police entry of Petitioner's home "may have violated" the Fourth Amendment, J.A. 13, Respondent argued exclusion was an impermissible remedy under the Michigan Supreme Court's ruling in *People v. Stevens*, 597 N.W.2d 53 (Mich. 1999).

Stevens held that evidence unlawfully obtained pursuant to a police violation of the knock-and-announce requirement is not subject to the exclusionary rule, provided the police

possess a valid search warrant and conduct a search of proper scope. Acknowledging that announcement is constitutionally mandated by *Wilson v. Arkansas*, 514 U.S. 927 (1995), and its progeny, *Stevens* explained that under this Court's cases "there has to be a causal relationship between the violation and the seizing of the evidence to warrant the sanction of suppression." 597 N.W.2d at 60. *Stevens* concluded that the inevitable discovery exception to the exclusionary rule was applicable where police violate the Fourth Amendment's announcement requirement. According to the court, the "exclusionary rule is not meant to put the prosecution in a worse position than if the police officer's improper conduct had not occurred, but, rather it is to prevent the prosecutor from being in a better position because of that conduct." *Id.* at 61, *quoting Nix v. Williams*, 467 U.S. 431, 443 (1984) (hereinafter *Williams II*). Because the police in *Stevens* had a valid warrant, the Michigan Supreme Court opined that "the evidence would have been discovered despite any police misconduct" and that there are state and federal "disincentives to deter police misconduct." *Id.* at 62.

The Michigan Court of Appeals granted Respondent's motion for peremptory reversal of the trial court's order suppressing the evidence found on Petitioner and in his home. That court ruled that *Stevens* and *People v. Vasquez*, 602 N.W.2d 376 (Mich. 1999) (*per curiam*) (reaffirming *Stevens*), did not authorize exclusion as an appropriate remedy for a knock-and-announce violation. Pet. App. 4. Petitioner filed an application for leave to appeal to the Michigan Supreme Court, but that application was denied. The Michigan Supreme Court reaffirmed its earlier holdings in *Stevens* and *Vasquez* that exclusion is not a proper remedy for a violation of the Fourth Amendment's announcement rule. Pet. App. 5.

Petitioner was then convicted in the trial court of possession of less than 25 grams of cocaine, based on the evidence discovered in his pants; he was acquitted of felony

firearm and possession of cocaine with intent to deliver. Petitioner was sentenced to 18 months probation. J.A. 21-24. Petitioner again appealed to the Michigan Court of Appeals, but that court affirmed his conviction based on the holdings in *Stevens* and *Vasquez*. Petitioner's application to the Michigan Supreme Court for leave to appeal the judgment of the Court of Appeals was denied. This Court granted certiorari to consider whether the inevitable discovery doctrine creates a *per se* exception to the exclusionary rule for evidence seized after a Fourth Amendment knock-and-announce violation.

SUMMARY OF ARGUMENT

This case presents in unmistakable terms the question of constitutional remedy undecided in *Wilson v. Arkansas* and its progeny: whether and in what circumstances it is appropriate to exclude evidence seized in violation of the Fourth Amendment's knock-and-announcement requirement. The Michigan Supreme Court has held that the inevitable discovery doctrine authorizes a *per se* exception to the exclusionary rule for evidence illegally seized after a Fourth Amendment announcement violation. That judgment is inconsistent with the logic of this Court's knock-and-announce and exclusionary rule decisions.

According to the Michigan court's analysis, the violation of the announcement requirement "was independent of" the search and seizure that occurred in Petitioner's home. *Stevens*, 597 N.W.2d at 64. This analysis ignores *Wilson*'s holding that "the method of an officer's entry into a dwelling [is] among the factors to be considered in assessing the reasonableness of a search or seizure." *Wilson*, 514 U.S. at 934. Because the police violated the announcement requirement, as conceded by Respondent below, the search and seizure inside Petitioner's home was unconstitutional under the Fourth Amendment. Thus, the courts below were wrong to suggest that the search of Petitioner and his home was causally disconnected from the announcement violation. The

correct analysis is provided by *Wilson*: the illegal entry into Petitioner's home unconstitutionally tainted the subsequent search and seizure that occurred inside.

Because *Wilson* and its progeny indisputably establish that the intrusion into and search of Petitioner's person and home was unconstitutional, the question here is whether the exclusionary rule is the proper remedy for an announcement violation. The argument against exclusion—at its core—is that Petitioner would find himself in the same position (because the evidence would have been found anyway) if the search had been properly announced. There are three reasons why this argument proves too much.

First, unless illegally obtained evidence is excluded, there will be no effective deterrent to future announcement violations in ordinary cases like Petitioner's. Common sense teaches that if exclusion is unavailable as a remedy for an announcement violation, officers will not comply with *Wilson* and its progeny. Affirming the judgment below would mean the evisceration—as a practical matter—of the constitutional protection announced in *Wilson*.

Second, the Michigan Supreme Court's analysis misunderstands the purpose of the exclusionary rule. Even assuming that the evidence found in Petitioner's pants would have been discovered had the police complied with the announcement requirement, that fact is irrelevant when determining whether exclusion is appropriate for a Fourth Amendment violation. This Court recognizes that the purpose of exclusion is to deter future violations of the Fourth Amendment; it has, moreover, repeatedly explained that the "wrong condemned by the [Fourth] Amendment is 'fully accomplished' by the unlawful search or seizure itself, and the exclusionary rule is neither intended nor able to 'cure the invasion of the defendant's right which he has already suffered.'" *United States v. Leon*, 468 U.S. 897, 906 (1984) (citations omitted). If when determining the applicability of the exclusionary rule in a